IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

NO. 74-206

THERMTRON PRODUCTS, INC. (erroneously sued as Therntron Products, Inc.) and LARRY DEAN NEWHARD ..... PETITIONERS

VS.

HON. H. DAVID HERMANSDORFER, JUDGE, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY ..... RESPONDENT

BRIEF AND APPENDIX OF PETITIONERS

FRANK G. DICKEY, JR.
LANDRUM, PATTERSON & DICKEY
201 Security Trust Building
Lexington, Kentucky 40507

Counsel for Petitioners

PRINT MASTER INC., 845 LANE ALLEN RD., SUITE 23, LEXINGTON, KY. 40504. PH. 277-5134

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BRIEF AND APPENDIX OF PETITIONERS

I. OPINIONS BELOW

The Order or Judgment of the United States Court of Appeals for the Sixth Circuit is unreported and appears in the Petition for Writ of Certiorari, Appendix, page 1a-2a. The Order of the United States District Court for the Eastern District of Kentucky, at Pikeville, remanding the Civil Action styled Jay Lee Little and Lona Little vs. Therntron Products, Inc. and Larry Dean Newhard is set forth in the Petition for Writ of Certiorari, Appendix, p. 3a-6a.

II. JURISDICTION

The Order or Judgment of the United States Court of Appeals for the Sixth Circuit was entered on June 4, 1974. The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

III. STATUTES INVOLVED

The pertinent provisions of Title 28, United States Code, appear in the Appendix, infra, pp. 1a-3a.

IV. QUESTION PRESENTED

Whether a Writ of Mandamus and/or Writ of Prohibition should issue to the Respondent, a United States District Court Judge, where the statutory right of removal, in a diversity action, has been arbitrarily denied the Petitioners, contrary to the mandatory and unambiguous provisions of 28 U.S.C. §1441, et. seq., where the Respondent remanded this diversity action to a state court merely because of a crowded docket, when by his own admission the Petition for Removal was timely filed in strict compliance with the statutory provisions and all jurisdictional requirements.

V. STATEMENT OF THE CASE

The facts herein are uncontroverted. Petitioners have a statutory right of removal in a diversity action. This right has been afforded the Petitioners by Act of Congress, in accord with the Constitutional authority to establish tribunals to hear controversies between citizens of different states.

Pursuant to the statutory right of removal, the Petitioners properly and in strict compliance with the provisions of 28 U.S.C. §1441 and §1446, removed this action from the Pike Circuit Court, Pike County, Kentucky to the United States District Court for the Eastern District of Kentucky, at Pikeville. (A. p. 3). This fact is undisputed, and, in fact, conceded by the Respondent herein. (Petition for Writ of Certiorari, Appendix, p. 3a). Recognizing that all jurisdictional requirements had been met, the Respondent properly assumed and exercised jurisdiction over the within action. No objection to jurisdiction has ever been made by any party.

Nevertheless, after more than nine months had elapsed, after the proper removal by the Petitioners, and shortly after the Petitioners had served notice to take the discovery depositions of the plaintiffs below, the Respondent, *sua sponte,* entered an Order requiring the Petitioners to show cause why the action should not be remanded to the Pike Circuit Court since "there is no available time in which to try the above styled action in the foreseeable future." (A. p. 14). This

Order was entered despite a finding made by the Respondent that the within action "was removed pursuant to the provisions of 28 U.S.C. §1446." (A. p. 14).

Petitioners responded to the aforementioned Order, within the ten days ordered by the Respondent, and objected to remand upon the grounds that the same would deny the petitioners their statutory right of removal. (A. p. 16). Further objection was made to any remand upon the grounds that once the Respondent had determined that the Petition for Removal complied with the statutory requirements, with respect to jurisdictional allegations, the District Court was vested with jurisdiction and that the Respondent had no authority, whatsoever, nor any discretion to divest the District Court of jurisdiction over the parties or subject matter. (A. p. 16). Petitioners also declared that they did not believe they could receive a fair and impartial trial in the Pike Circuit Court. (A. p. 16).

Nevertheless, the Respondent, after having conceded that the Petitioners have a right of removal, that this action was properly removed, and after having exercised jurisdiction for more than nine months, remanded this case to the State court, stating as follows:

> "That right afforded the defendants, however, must be balanced against the plaintiffs' right to a forum of their choice and their right to a speedy decision on the merits of their cause of action. The Court finds the right to choice of forum to be of little particular consequence. The plaintiffs' right to a speedy decision on the merits of their cause of action is of much greater significance."

As justification for this balancing process, the Respondent cited a heavy case load and crowded docket, with underlying priorities, as evidence of the impairment of the plaintiffs' right of redress. Respondent concluded that the statutory rights of the Petitioners herein would not suffer if this action was remanded. (Petition for Writ of Certiorari, Appendix, pp. 3a-6a)

Petitioners, thereafter, sought extraordinary relief, by Writ of Mandamus and/or Writ of Prohibition, in the United States Court of Appeals for the Sixth Circuit. (A. p. 21). The relief sought by the Petitioners was founded upon the following principles:

1. It is the exclusive right of the Petitioners, pursuant to 28 U.S.C. §1441, et seq., to remove this action from State court, which right may not be substantively or procedurally denied these petitioners, nor may it be "balanced," weighed, or otherwise, against other discretionary considerations where the action was properly removed in all jurisdictional requirements and in strict compliance therewith.

2. Respondent has no authority, whatsoever, or any discretion to divest the United States District Court for the Eastern District of Kentucky of jurisdiction over the parties or subject matter, where the District court recognized, assumed, and properly exercised jurisdiction, in a case properly removed, where there is no objection, nor question with regard to jurisdiction, and where it is the mandatory duty of the Respondent to retain jurisdiction, once properly determined and exercised as herein done.

3. The Memorandum, Opinion and Order of Remand clearly ignores and violates the mandatory and unambiguous provisions of 28 U.S.C.§1441, et seq., so as to deprive the petitioners of their statutory rights.

Respondent replied to the aforementioned statements by stating, in essence, that removal is but a mere privilege and subject to judicial discretion. Although the Respondent stated that "there is no doubt merit in defendants' argument of being in Federal Court as a matter of right," it was asserted that this does not outweigh the plaintiffs' right to have a reasonable timely trial. (A. p. 35).

On June 4, 1974, the United States Circuit Court of Appeals for the Sixth Circuit denied the Petition for Writ of Mandamus and/or Writ of Prohibition upon the grounds that it did not have jurisdiction to review the Order of Remand. This Court granted Certiorari on February 18, 1975.

V. SUMMARY OF ARGUMENT

Petitioners have a statutory right of removal, in a diversity action. No discretionary authority or power exists to remand a case to State court. A cause, properly removed to District Court, should not be remanded if it was properly removable upon the record as it stood at the time of the filing of the Petition for Removal, as in the instant case. Only if an action is removed "improvidently," and if the District Court is without jurisdiction can a case be remanded. Respondent has conceded that the within action was properly removed in strict compliance with the statutory provisions and all jurisdictional requirements. Furthermore, the Respondent recognized, assumed, and exercised jurisdiction over the within action for more than nine months after the proper removal by the Petitioners. The Order of Remand was not founded upon informed judicial determination that the removal was improvident, or that the District Court lacked jurisdiction, or any other legal conclusion but was arbitrarily based upon considerations of docket priorities and impairment of the plaintiffs' right of redress. Such considerations have no legal foundation in the statutory scheme. Respondent arbitrarily remanded the action upon purely discretionary grounds, after having properly assumed and exercised jurisdiction, thereby denying the Petitioners their statutory right of removal.

The refusal of the Circuit Court of Appeals for the Sixth Circuit to accept jurisdiction, determine the issue

involved herein, and grant the relief sought by these petitioners permitted unlimited discretion to the Respondent and other District Court Judges to remand cases, even though properly removed, as they see fit. The effect of such unbridled discretion, upon orderly judicial administration, is unwarranted. Therefore, the Petitioners are entitled to the relief sought herein.

VI. ARGUMENT

A WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION SHOULD ISSUE TO THE RESPONDENT, A UNITED STATES DISTRICT COURT JUDGE, WHERE THE STATUTORY RIGHT OF REMOVAL, IN A DIVERSITY ACTION, HAS BEEN ARBITRARILY DENIED THE PETITIONERS, IN VIOLATION OF THE MANDATORY AND UNAMBIGUOUS PROVISIONS OF 28 U.S.C. §1441, et seq., WHERE THE RESPONDENT REMANDED THIS DIVERSITY ACTION MERELY BECAUSE OF A CROWDED DOCKET, WHEN BY HIS OWN ADMISSION THE PETITION FOR REMOVAL WAS TIMELY FILED IN STRICT COMPLIANCE WITH THE STATUTORY PROVISIONS AND ALL JURISDICTIONAL REQUIREMENTS.

The inherent authority rests with this Court to intercede and direct the Circuit Court of Appeals for the Sixth Circuit not only to decide a case which has been wrongfully remanded, but also to direct the Respondent herein to retain jurisdiction of the within action. It is imperative that a Writ of Mandamus and/or Writ of Prohibition issue to the Respondent

commanding the District Court to set aside the wrongful Order of Remand and retain jurisdiction of this action and prohibit the District Court from abdicating the mandatory jurisdictional responsibilities required by Statute. To rule otherwise would grant all District Court Judges' unbridled discretion to remand diversity cases for which there would be no review, and leave non-resident removing parties without any remedy. Such a decision would have chaotic effect upon judicial administration. This effect, as well as the effect of statutory repeal, by implication, would be certainly unwarranted.

Neither the language nor the spirit of 28 U.S.C. §1441, et seq. prevents a Circuit Court of Appeals from exercising jurisdiction to hear and decide a case which has been wrongfully remanded. Furthermore, 28 U.S.C. §1441 et seq. neither grants nor permits the respondent any discretion, whatsoever, to remand a case, properly removed in strict compliance with all statutory and jurisdictional requirements.

It is undisputed that the Petitioners, in every respect, properly removed this action to District Court. Respondent, in remanding this case to State court, upon purely discretionary grounds, violated the mandatory and unambiguous provisions of 28 U.S.C. §1441, et seq. There is no purely discretionary power or authority to remand a case to State court. Although the Respondent takes exception from a semantic standpoint, to this principle, it is clear that

the Respondent had no discretion to remand this case. Were it otherwise, the statutory provisions would be rendered ineffective. Also, the same would constitute statutory repeal by implication, which is not favored.

Petitioners recognize that if an action is improvidently removed and jurisdictionally defective, it should be remanded. However, such is not the case here. The Order of Remand, entered by the Respondent, was not founded upon informed judicial determination that the removal was improvident, or that the District Court lacked jurisdiction, or any other legal conclusion, but was arbitrarily based upon considerations of docket priorities and impairment of the plaintiffs' right of redress. Such Order of Remand was not only wrongful but void. Petitioners submit that the Order of Remand, in the instant action, was based only upon certain considerations which have no legal foundation in the Statutory scheme and should be declared void.

With respect to the principle that there is no discretionary authority to remand, the Court stated in *Vann* v. *Jackson*, 165 F. Supp. 377 (E.D.N.C. 1958), at pp. 380-381, as follows:

> "(T)he proposition has been advanced that the Court had discretionary power to remand this case to the state court, even though properly removed to the federal court. In considering this question, the court must exercise care to determine that a discretionary power does exist,

> and that it will be in the interest of justice to exercise such discretion.
>
> * * * Since there is no means for reviewing an order remanding a case to a state court, the court should act with caution in determining whether or not a power to remand exists. (Citation omitted). The Court is without power to remand if no discretionary power exists.
>
> * * * It is concluded that where congress has provided both a state and a federal forum, and has further provided for actions first brought in the state court to be removed to the federal court, *no discretionary power exists to remand the case to the state court.*" (emphasis added).

In *Isbrandtsen* vs. *District 2, Marine Engineers Beneficial Association,* AFL-CIO, 256 F. Supp. 68 (E.D.N.Y. 1966), the District Judge met the argument that despite the fact that the Court had jurisdiction, that it also had discretion to remand, at page 77, as follows:

> "The Union urges the court to remand to the state court despite a finding that it has jurisdiction. It advances a most unusual argument. It agrees that, regardless of the forum, federal law should and will regardless of the forum, federal law should and will be applied . . . . It assumes that despite a finding of federal court jurisdiction, this court has the discretionary power to remand and reminds the court that, should it remand, its order would not be

> subject to review . . . . Having jurisdiction, this court, in my view, has no discretionary power to remand in a case such as this which does not call for the application of the doctrine of abstention. Even if there were such a discretionary power, the Court would not exercise it in favor of a remand."

From these cases, it is clear that no discretionary power exists to remand this case to the State court. Furthermore, the Respondent admittedly exercised jurisdiction over the within action for more than nine months, and, therefore, had no discretionary power to remand this case.

In *Davis* vs. *Joyner*, 240 F. Supp. 689 (E.D. N.C. 1964), the identical question presented in the case of *Vann* vs. *Jackson, supra*, and *Larkin* vs. *Roseberry*, 54 F. Supp. 373 (E.D. Ky. 1944), was presented to the Court. The court, therein, stated at page 691, that the court's authority to remand is found in Title 28 U.S.C. §1447 (c) and provides that the District Court shall remand if "it appears that the case was removed improvidently and without jurisdiction." It was held that this was certainly not the case in that instance, and it is certainly not the case, in the instant action.

The contention propounded by the Respondent, obviously favoring discretionary power to remand, has been consistently rejected. Respondent is apparently the first District Court Judge to actually infer discretionary power, *sue sponte*, to remand or

infer such discretionary power from the statutory provisions, where such discretion is not founded upon any legal basis or jurisdictional basis but solely upon discretionary considerations, such as a crowded docket. Such discretion cannot be justified. Only if an action is removed "improvidently," which means "wrongfully or without legal basis" and if the District Court is without jurisdiction can a case be remanded. *Harlin Laboratory* vs. *Topp's Chewing Gum*, 131 F. Supp. 262, 267 (E.D.N.Y. 1955). The instant case was neither removed improvidently nor without jurisdiction. Thus, it was improper to remand the same.

With regard to the citation by the Respondent of a heavy case load and crowded docket, and balancing the same with underlying priorities and impairment of the plaintiffs' right of redress, one Court has specifically addressed itself to such argument concerning remand.

In *Romero* vs. *ITE Imperial Corporations*, 332 F. Supp. 523 (D.C.P.R. 1971), a timely petition for removal was filed on January 19, 1971. On July 7, 1971, the plaintiff filed a motion to remand based upon the grounds that a remand would speed up the proceedings and would therefore be in the interest of justice. The Court stated, at page 526, as follows:

> "The right to remove an action from a state court to the Federal District Court is a statutory right and it is a right that has existed since the

original Judiciary Act of 1789. (Citations omitted) 'The whittling away or surrender of diversity jurisdiction, or of any other part of the Federal jurisdiction which serves a legitimate function under the Constitution, only weakens the federal system under which we have long prospered and, with fair success, have done justice between disputants.' (Citation omitted).

Plaintiff's argument to the effect that a remand would speed up the proceedings in this case and would therefore be in the interest of justice is not correct . . . *Once the statutory requirements for the right of removal have been met, this court cannot order a remand on discretionary grounds such as the alleged speedier trial to be afforded the plaintiff.*" (emphasis added).

Thus, the remand of this case by the Respondent, in the "interest of justice" to provide an earlier trial date, was improper and must be remedied by issuance of a Writ of Mandamus and/or Writ of Probition to the Respondent herein.

The statutory right of removal is a valuable right which must be protected by the District Courts. *Home Insurance Co.* vs. *Morse*, 20 Wall 445, 22 L. Ed. 365 (1874); *Muller* vs. *Lyke Coastwise Line*, 144 F. Supp. 135 (S. D. Tex. 1940); and *Gentle* vs. *Lamb-Weston, Inc.*, 302 F. Supp. 161 (N.D. Maine 1969). Thus, when a District Court is presented with an action of which it has cognizance it may not turn the matter over for adjudication to the State Court.

Mach-Tronics, Incorporated vs. *Zirpoli*, 316 F. 2d 820 (9th Cir. 1963).

Article III, §2 of the Constitution of the United States provides that the Judicial power of the United States shall extend to controversies "between citizens of different states." This action is one between citizens of different states. Congress has promulgated statutory procedures and requirements extending such judicial power in the form of the removal statute. Respondent has recognized that the purpose of this statute was specifically to relieve a party of the possibility of local prejudice, with the predecessor of the present removal statute aptly entitled the Prejudice or Local Influence Act of 1867. (Petition for Writ of Certiorari, Appendix, p. 6a). Petitioners have declared that they did not believe they could receive a fair and impartial trial in the State court. (A. p. 16). Thus, the relief sought by the Petitioners should be granted by this Court.

As stated in Moore's Federal Practice, Volume 1, §0171 (3.-2) at p. 701.29:

> "Despite frequent agitation to eliminate or curtail diversity jurisdiction especially in light of the ever increasing work load of the Federal Courts, diversity continues to provide a foundation for a substantial part of the cases in the lower Federal Courts. From the foundation of the Republic and during the ensuing years, the lower Federal Courts have been a cohesive force, during both quiet and tumultuous times, holding

this Nation together under the binding principles of Justice under law. * * * local Courts alone cannot resolve the conflicts and lead the way. * * *

* * * the Constitution envisions a working partnership between the State and Federal Courts under which each forum may enforce the law of the other sovereign when it is deemed appropriate. *If delay in the Federal Courts has become excessive, as it no doubt has in many places, remedies should be sought which strike at the cause of the delay and which do more than merely relocate the problem in the State Courts. The whittling away or surrender of diversity jurisdiction, or of any other part of the Federal jurisdiction which serves a legitimate function under the Constitution, only weakens the Federal System under which we have long prospered and, with fair success, have done justice between disputants.*" (emphasis added).

Regardless of whether the problem be one of a crowded docket or affording litigants earlier trial dates, attempts should not be made to merely relocate the problem in State court. This the Respondent and Sixth Circuit have attempted to accomplish. In so doing, the Circuit Court of Appeals for the Sixth Circuit has clearly ignored a basic principle previously espoused by that Court. In *Direct Transit Lines* vs. *Local Union, No. 406,* 199 F. 2d 89 (No. 6th Cir. 1952), the Court stated that a cause, removed to District Court, should not be remanded if it were properly removable upon the record as it stood at the time of the filing of

the petition for removal. Thus, the conclusion of the Circuit Court of Appeals for the Sixth Circuit, that it had no jurisdiction to review the wrongful Order of remand, was clearly erroneous, particularly in view of the fact that the Respondent herein conceded that this action was properly removable and properly removed, which fact was presented to the Sixth Circuit and apparently disregarded. Although the *Direct Transit Lines* case, was partially distinguished in *Hat Corp. of America* vs. *United Hatters, etc.*, (D.C. Conn.) 114 F. Supp. 890 (1953), upon the grounds that the Court's attention was principally focused on the propriety of remedy by mandamus, the proposition that a case should not be remanded if properly removed still stands in the Sixth Circuit.

Petitioners submit that the Sixth Circuit should be compelled to grant the Writ of Mandamus and/or Writ of Prohibition in the instant case. Where the order remanding a cause is based upon grounds, not affecting the jurisdiction of the Court, it may be reviewed by mandamus. *Bankers Securities Corp.* vs. *Insurance Equities Corp.*, 85 F. 2d 511 (4th Cir. 1934). Furthermore, in *Travelers' Protective Association of America* vs. *Smith,* 71 F. 2d 511 (4th Cir. 1934) where the propriety of the removal was never challenged, as in the instant case, the District Court Judge entered an Order remanding the case, without finding that it had been improperly removed and without anything appearing of record to show that the removal was in any wise improper. Defendant

appealed from the Order of remand and requested leave to file a Petition for a Writ of Mandamus. The Circuit Court of Appeals for the Fourth Circuit denied the right of appeal, however, granted leave to file a Petition for Writ of Mandamus. In concluding that the case merited a remedy, when the District Court had improperly remanded the case, the Court stated as follows, at pages 512-513:

> "It is clear that the effect of this statutory provision is to forbid appellate review of an order remanding a case when 'the district court shall decide that the case was improperly removed.' In such case, the order of remand is a final determination of the right to remove and is not reviewable by appeal, mandamus or otherwise. And we think that, even though the court may not make an express finding as to improper removal, the order of remand is not subject to review, if upon the record, the presumption can be indulged that the order was made because the court was of the opinion that the removal was improper; for in such case the maxim applies omnia praseumntur rite esse acta. But where, as here, it clearly appears that the order was made, not because the court decided that the cause had been improperly removed, but because of a remittiture entered after it had admittedly acquired jurisdiction, we do not think that either the words or the spirit of the statute prevents our directing that it proceed to exercise that jurisdiction by hearing and deciding the case.
>
> "* * * We have carefully examined the authorities which hold that, because of the provisions of Section 28 of the Judicial Code, mandamus no longer lies to require a district court to hear and determine a case which has been remanded. The

> **language of some of the cases is very broad, but they must be interpreted in connection with the facts under review and in all of them there was express or implied finding of improper removal. In none of the cases which we have been able to find has it been held that the effect of the statute is to deprive the appellate court of the power to require the trial court to hear and decide a case which has been properly removed and which has been remanded solely on the ground of action taken subsequent to removal which did not affect jurisdiction.**
>
> **"If the provision of Section 28 of the Judicial Code be construed as forbidding review of an order of remand in a case such as this, a party in the situation of the defendant here will be without remedy; for it is settled that in cases to which that provision applies the order remanding the case to the state court is not reviewable even upon appeal from the state court. (citations omitted). We do not think that it was the intention of Congress that a party entitled to invoke the federal jurisdiction should be without remedy if the court, without a finding express or implied of improper removal, should remand the case to the state court on a ground arising after removal and not affecting jurisdiction. Certainly we do not find in the statutes any evidence of such intention.**
>
> **"* * * Leave will be granted defendant to file a petition for writ of mandamus requiring the court below to hear and determine the case. It will probably not be necessary for defendant to file such petition, as the learned judge may of his own motion vacate the order remanding the case and proceed to hear and decide it."**

The Sixth Circuit should be compelled not only to hear and decide this matter, but also to grant the relief sought by these Petitioners.

The statutory right of removal, in the instant action, has been arbirarily denied the petitioners. There is no discretionary authority to remand an action properly removed in strict compliance with the statutory provisions and all jurisdictional requirements. Furthermore, there is no discretionary power to remand an action where the District Court has recognized, assumed, and properly exercised jurisdiction. Only if an action is removed "improvidently" and if the District Court is without jurisdiction, can a case be remanded, which is certainly not the instant case. As long as the statutory provisions remain, they must be followed by the Respondent and the Circuit Court of Appeals for the Sixth Circuit. This Court is possessed with the power and authority to direct and compel such compliance and grant the relief sought by these Petitioners.

CONCLUSION

It is respectfully submitted that this Court require and compel the Respondent to set aside the void Order of remand and retain jurisdiction of Civil Action No. 1723 in the United States District Court for the Eastern District of Kentucky, at Pikeville, and prohibit and forbid the Respondent from

divesting the United States District Court for the Eastern District of Kentucky, at Pikeville, of jurisdiction over the subject matter and parties in said action, and further prohibit and forbid the respondent herein from abdicating the mandatory duties, obligations, and responsibilities as Judge in said action. Petitioners further submit that this Court command the Circuit Court of Appeals for the Sixth Circuit to grant and issue the Writ of Mandamus and/or Writ of Prohibition sought by these Petitioners.

Respectfully submitted,

FRANK G. DICKEY, JR.
LANDRUM, PATTERSON & DICKEY
201 Security Trust Building
Lexington, Kentucky 40507

BY: Frank G. Dickey Jr.
COUNSEL FOR PETITIONERS

APPENDIX

STATUTES INVOLVED

United States Code, Title 28:

§1441 Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

§1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State Court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after

the service of summons upon the defendant if such initial pleadings has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

* * *

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceeding should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition and bond, the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

* * *

§1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before if all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State Court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to Section 1443 of this title shall be reviewable by appeal or otherwise.

CERTIFICATE OF SERVICE

I, Frank G. Dickey, Jr., one of counsel for the Petitioners, Thermtron Products, Inc. and Larry Dean Newhard, and a member of the Bar of the Supreme Court of the United States do hereby certify that on the 2nd day of April, 1975, copies of the foregoing Brief for Petitioners were mailed, postage prepaid, to Hon. H. David Hermansdorfer, Judge, United States District Court, Eastern District of Kentucky, P. O. Box 695, Cattlesburg, Kentucky 41129, Respondent, and Kelsey E. Friend Law Firm, Pauley Building, Pikeville, Kentucky 41501, and I do hereby further certify that all parties required to be served have been served.

FRANK G. DICKEY, JR.
LANDRUM, PATTERSON
& DICKEY
201 Security Trust Building
Lexington, Kentucky 40507

BY: Frank G. Dickey, Jr.
COUNSEL FOR PETITIONERS